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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

IN RE: U.S.S.N. 09/518,165 )  
FILED: March 1, 2000 )  
TITLE: METHOD FOR DETECTING )  
PRESENCE OF TARGET )  
BACTERIA OR A TARGET )  
COMPONENT )  
CARBOHYDRATE )  
ANTIGEN THEREOF )  
INVENTORS: V.A. Koulchin, N.J. ) GROUP ART UNIT: 1645  
Moore, E.V. Molokova )  
and M.K. Fent )  
EXAMINER: Ja-Na Hines

**PETITION TO REVIVE UNINTENTIONALLY  
ABANDONED PATENT APPLICATION**

This petition seeks revival of U.S. Patent Application Ser No. 09/518,165, further identified in the heading hereof.

This application became unintentionally abandoned as of 12:01 A.M. on September 13, 2004 under the circumstances set forth in the fact section below.

A check in the amount of \$665.00 to cover the small entity fee for a petition to revive an unintentionally abandoned patent application is appended hereto.

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## THE FACTS

1. A Notice of Appeal to the Board of Patent Appeals and Interferences was filed herein on March 11, 2004 accompanied by a check covering the small entity appeal fee of \$165.00 and a Request for Remand to Examiner interposed for the specific purpose of obtaining from her either such comments as she might advance on the Affidavit of William J. Palin, Ph. D., or an acknowledgment that she had none. This affidavit was not mentioned in the office action of December 11, 2003 even though it was a part of the papers filed in response to the immediately preceding Office Action and it contains facts asserted by Dr. Palin, (an individual who has spent some 35 years working in the field of immunology, into which the invention falls) in rebuttal to the fact positions that were earlier advanced, without any supporting evidence by the Examiner.
2. By May 11, 2004 when the Brief was originally due, I had neither received a response to my request for a limited remand nor any other information about the appeal. I considered it important for the Examiner to comment on the Palin affidavit or state that there were no comments *before* I wrote and submitted the Brief, and I accordingly decided to obtain an extension of time of 3 to 4 months for filing it, in the hope that the Examiner's comment would meanwhile be received.
3. In August 2004, I commenced writing the Brief, spending substantial time on it for 3 to 4 days, but I put it aside because of (1) my understanding that the final date for filing it was Monday, September 13, 2004 (the first business day

following Saturday, September 11, 2004)--the six-month anniversary of the filing of the notice of Appeal, (2) my hope of receiving an Examiner's comment on the Palin affidavit in the interim, and (3) a need to work on several emergency matters with deadlines in August.

4. Over the period between September 9 and September 13, including on each of Saturday, September 11 and Sunday, September 12, I worked diligently, spending a very substantial amount of time on preparation of the brief. On Monday, September 13, I again worked on the brief, and in the meantime, my staff worked on the formatting and typing thereof on our office computers. Because the brief is fairly lengthy and the first run of it required some corrections to be made , it was approximately 11:10 P.M. that day when the Brief in 3 copies, the Request for a 4-month time Extension, the \$905.00 check to cover the small entity four- month time extension fee and the and appeal brief fee, and a single handwritten post card to be stamped at filing by Patent and Trademark Office personnel were ready for me to deliver to the U.S. Patent and Trademark Office window at Crystal City that is open until midnight on each weekday from Monday through Friday that is not a national holiday.
5. I frequently deliver papers prepared in my office to the U.S. Patent and Trademark Office window referred to in the preceding paragraph for filing. My usual trips there, however, are made during rush hour and I have found that Memorial Bridge is best avoided at that time, so I circumvent it by taking Key Bridge and going through Rosslyn, taking the route that then leads along the

Potomac and into Reagan National Airport, from which I approach Crystal City on Crystal Drive.

6. Since it was between 11:15 P.M. and 11:20 P.M. when I reached my car in the garage where I normally park, and I wanted to be sure to arrive at the aforementioned window as quickly as possible, I decided to go over Memorial Bridge in the hope of getting to the window well in advance of 12:00P.M., the deadline hour.
7. Unfortunately, I am not very familiar with the route to Crystal City from that bridge, and although I made a right turn off the bridge and an immediate left turn thereafter, intending to go from there to the route along the Potomac to Reagan National Airport and into Crystal City with which I'm familiar, I somehow made an egregious error and took a wrong turn. I wound up traveling around the Pentagon, past several Pentagon exits and along the main route to Richmond, on which I could see no signs for Crystal City or Jefferson Davis Highway. As soon as I could, I made a left turn across this highway and drove off it, only to find that I was in an entirely unfamiliar area of high rise apartments. In what is best described as panic, I kept making turns toward where I estimated that Crystal City should be, to no avail, and after many such turns, I wound up at about 11:40 to 11:45 P.M. in an entirely unfamiliar, semi-industrial-seeming area of Alexandria, Virginia, where I drove around for what seemed a very long time, but could find no one from whom to seek directions and no road that looked remotely like Jefferson Davis Highway. Not until my

car clock (which is accurate by my car radio) showed 11:56 P.M., did I fortuitously find a guardhouse fronting the street with a guard in it, and I sought and was given directions to Crystal City which I followed as fast as possible, I unfortunately arrived there at about 12:10 P.M. by my car clock, too late for my papers to be accepted as of their due date.

8. My failure to get to Crystal City on time on September 13, 2004 was wholly unintentional; indeed it was contrary to every intention firmly embedded in my mind, and it has caused me great continuing mental distress to know that the result was abandonment of Application Ser. No. 09/518,165, an application I know to be very important to my client.
9. This petition to revive is accompanied by each of the following:
  - (a) three copies of the Brief of Appeal
  - (b) the request for a four month time extension and the check dated September 13, 2004 for \$905.00 to cover the \$165.00 small entity appeal brief fee and the \$740.00 small entity four month time extension fee; and
  - (c) a copy of the handwritten postcard I had intended to have stamped on September 13, 2004.
10. I state further that I know that the assignee of this patent application is very desirous that this application, which it has at no time intended to have abandoned, be revived as soon as possible.

Respectfully submitted,

*Mary Helen Sears*

Mary Helen Sears, Reg. 19,961

Attorney for Appellants

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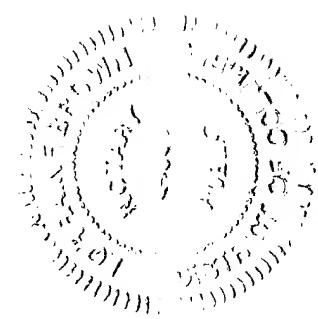
Telecopy: (202) 463-4852

City of Washington  
District of Columbia

Subscribed and sworn to before me this 20<sup>th</sup> day of September 2004.

*Lorraine Brown*  
Notary Public

**LORRAINE BROWN  
NOTARY PUBLIC, DISTRICT OF COLUMBIA  
MY COMMISSION EXPIRES JULY 31, 2007**





## Exhibit #1

Filed herewith Brief on Appeal, (3cc.)  
Request for 4  
month time extension  
and check for  
\$905 to cover  
small entity  
appeal brief fee  
and small entity  
fee for time  
extension

Patent Appln. - Ser No 09/578165

Owner: Benax, Inc.